



## DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 313

July 11, 2006

### ILLEGAL PAT-DOWN SEARCH REQUIRES SUPPRESSION OF EVIDENCE

**Reference:** Joseph E. Erickson Alaska Court of Appeals  
v. No. 2053  
State of Alaska \_\_\_\_\_ P.3d\_\_\_\_\_  
July 7, 2006

### **FACTS:**

At about 4:00 a.m., an Alaska State Trooper conducted a traffic stop of a vehicle without a front license plate. The vehicle was occupied by two males who were not wearing their seat belts. The trooper asked both men to identify themselves. The driver produced his Alaska driver's license. The passenger said he did not have any identification, but said his name was Chris Erickson; he also gave the trooper a date of birth.

The trooper asked for an APSIN check and learned the driver, Eric Schroeder, was on probation for robbery in the first degree. There was no match with Chris Erickson. The trooper concluded that Erickson was "probably falsely reporting his name." The trooper decided, for his own safety, to order Erickson out of the car. After Erickson got out of the vehicle, the trooper saw a bag or purse lying in the snow next to the passenger door; it was not there before Erickson got out of the car. The trooper then patted Erickson down for weapons. During the pat-down, the trooper felt what "he knew 100 percent was some type of form of identification." The item was removed and it identified him as Joseph Erickson. The trooper then arrested Erickson for giving him false information.

After making the arrest, the trooper continued the pat-down and found a glass pipe in Erickson's front pants pocket; it

tested positive for methamphetamine. The bag found on the ground contained a white powdery substance that tested positive for methamphetamine.

Erickson moved to suppress all of the evidence. He argued that the trooper had no right to (1) order him out of the car, and (2) conduct the pat-down of his person.

**ISSUE #1:**

Did the trooper have the right to order Erickson out of the vehicle?

**HELD:** Yes--a police officer can order the driver and passengers out of a car that was stopped for a routine traffic violation, without need for any further justification; see Maryland v. Wilson, Legal Bulletin No. 214.

**ISSUE #2:**

Could the trooper conduct a pat-down search of Erickson?

**HELD:** No--there were no facts to support that Erickson was either armed or dangerous.

**REASONING:**

1. Not every legitimate stop (citing Terry v. Ohio) can be accompanied by a frisk. There must be reasonable belief that the suspect may be armed and dangerous before a frisk is initiated.

2. The court questioned whether Erickson was under detention or investigation for a crime; failure to wear a seatbelt is an infraction punishable by a fifteen-dollar fine.

3. The trooper had legitimate case-specific reasons for ordering Erickson out of the car (Maryland v. Wilson).

4. Although the trooper might have had reasonable suspicion that Erickson gave him a false identity, he did not have probable cause to arrest him. (emphasis added)

5. The trooper had sufficient information to allow him to order Erickson to get out of the vehicle, but there is nothing in the record that shows the trooper had sufficient reason to conduct a pat-down search for weapons. There is concern that, unless strictly regulated by courts, pat-down searches "may be used as a pretext to conduct a search for evidence."

**NOTES:**

The court has remanded this case to the Superior Court to determine if the bag-or-purse evidence found lying in the snow next to the car before Erickson was patted down would have been inevitably discovered by the trooper.

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:**

File Legal Bulletin No. 313 numerically under Section R of the manual.